

2016 LEGAL ASSISTANT CONFERENCE

April 29, 2016
Prescott Resort & Conference Center
Prescott, Arizona



ARIZONA LEGISLATIVE UPDATE A TO Z

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Distributed By:

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2016 Legislative Update

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Overview


Bills Introduced: 1219

Bills Signed: 105 (and counting...)

Effective Date: 90 days after sine die




Legislation that has been signed by the Governor as of April 26, 2016




HB2468:
Internet Crimes Against Children

- In 2015, legislature required a portion of the proceeds from vending machine lottery ticket sales to go to a newly created ICAC enforcement fund.
- Appropriates \$1.8 million dollars to the ICAC Taskforce for FY2017.
- Emergency clause and became law on February 10, 2016.



HB2001:
Unlawful Distribution of Private Images

- Amends 13-1425, relating to "revenge porn."
- Prior legislation was passed in 2014, but enjoined from enforcement.
- Emergency clause and became law on March 11, 2016.



HB2001:
Unlawful Distribution of Private Images

- Intentionally disclose an image of another:
 - in a state of nudity; or
 - engaged in a sexual act; or
 - when the person has a reasonable expectation of privacy; and
 - with the intent to harm, harass, intimidate, threaten or coerce the person depicted.
- It is class 5 felony if the person is recognizable.



HB2374:
Child Prostitution; Offense

- Amends ARS 13-3212 to include "knowingly providing a means by which a child engages in prostitution."
- A class 2 felony, punishable by ARS 13-705 if the victim is under 15 years of age.




HB2376:
Victim Restitution; Hearings

- In 2015, the Arizona Court of Appeals held that a victim's attorney could not present evidence or make argument regarding the amount of restitution owed by the defendant.
- The court based its decision, in part, on the prior case law which held that "restitution is not a claim which belongs to the victim, but a remedial measure that court is statutorily obligated to employ".




HB2376:
Victim Restitution; Hearings

- The rights enumerated in the Victims' Bill of Rights, implementing legislation and court rules belong to the victim.
- A victim has the right to present evidence or information and to make an argument to the court, personally or through counsel, at any proceeding to determine the amount of restitution owed.




SB1214:
Criminal Trials; Location

- Amends 13-109 so that if an offense is committed *in transit* and it cannot readily be determined in which county the offense was committed, trial of the offense may be held in any county through or over which the transit occurred.




SB1047:
County Attorney; powers

- Amends 11-532 to permit a CA to provide civil legal services to another CA at the request of that county's or political subdivision's elected or appointed general counsel.
- Previously had to enter into an IGA which is cumbersome when the matter is time sensitive. (i.e. civil commitments)




SB1104:
Medical Examiner; Jurisdiction

- Reporting of a death to law enforcement is expanded to include:
 - any unexpected or unexplained death;
 - death from an accident related to employment;
 - Death suspected to be caused by a unreported or undiagnosed disease that constitutes a threat to public safety.




SB1104:
Medical Examiner; Jurisdiction

- Permits an "alternate medical examiner" to perform many of the duties proscribed to a ME, including:
 - Completing and signing a death certificate;
 - Submitting information related to the result of the autopsy to the local or state registrar.



HB2183:
Inmate Body Scans

- Permits DOC or a county jail to perform a body scan of an inmate to prevent contraband from entering a correctional facility.
- Similar to those used at airport security, prevents the need for "traditional" body cavity searches.



SB1241:
Photo Radar; Prohibition

- Establishes 28-1206 which prohibits the state or a local authority from using photo radar to identify persons who commit violations of Chapter 3 Article 3 or 6.
- This includes speeding and obedience to traffic control signs and signals.



SB1228:
DUI Drugs; Ignition Interlock

- Amends 28-1381 and 28-1383.
- The court may order a person convicted of a DUI not involving the use of intoxicating liquor to equip their vehicle with a interlock device.
- Violations of 28-1381(A)(3) will no longer result in the mandatory revocation of a drivers license.



HB2514:
Restricted Vehicle Use; DUI

- ARS 41-1758.03, relating to fingerprint clearance cards, requires a person convicted of DUI to have a notation on their FCC that they are prohibited from driving a vehicle to transport others as part of their employment for 5 years following their conviction.



HB2514:
Restricted Vehicle Use; DUI

- HB2514 exempts persons licensed pursuant to title 32, chapter 20 (Real Estate Agents) unless they are also employed by an "agency".
 - Defined in 41-1758 and includes agencies such as the department of child safety, the department of education, the department of juvenile corrections, the department of transportation, the state real estate department, etc.



**HB2451:
Release of Prisoners; Detainers**

- Repeals 41-1604.14 which permitted the Director of ADC to release a prisoner to the custody and control of ICE if:
 - ADC receives an order of deportation;
 - The prisoner has served at least one-half of their sentence; and
 - The prisoner was convicted of certain class 3, 4, 5 or 6 felonies.



**HB2154:
FTA; Arrest; Fingerprinting**

- DPS is responsible for operating and maintaining the central state repository for fingerprints and criminal histories in order to collect, store and disseminate complete and accurate criminal justice records and information.




**HB2154:
FTA; Arrest; Fingerprinting**

- DPS is required to procure from all criminal justice agencies in this state the fingerprints, charges, process control numbers and dispositions and other pertinent information of all persons who have been charged with or arrested for, certain misdemeanors, sexual offenses or any other felony.




HB2154:
FTA; Arrest; Fingerprinting

- Designates the following agencies as responsible for taking 10-print fingerprints for submittal to the Repository:
 - The booking agency in the case of an arrest;
 - The county sheriff in the case of an indictment or complaint;
 - The city or town law enforcement agency that arrested the defendant for a misdemeanor.




HB2154:
FTA; Arrest; Fingerprinting

- Consolidates A.R.S. § 13-3904 (violation of promise to appear) and A.R.S. § 13-2506 (failure to appear in the second degree) into one section (both now under A.R.S. § 13-2506).
- Does not make any substantive changes to either offense.




HB2419:
Stalking; Offenses; Definitions

- Modernization of the stalking statute.
- Expands 13-2923 to include conduct which causes a victim to suffer emotional distress or reasonably fear that:
 - Property will be damaged;
 - Victim, victim's family member, animal or a person with whom the victim has a romantic or sexual relationship will be injured or killed.




HB2419:
Stalking; Offenses; Definitions

- Expands the definition of "course of conduct" to include:
 - Acts performed directly, indirectly or through third persons.
 - Electronic communications.




HB2539:
Sex Offender Registration; Petition

- A person convicted of A.R.S. § 13-1405 (SCWM) who is required to register as a sex offender and has successfully completed a term of probation may petition the court for an order to terminate their duty to register.
- The defendant may serve a copy of the petition on the prosecutor.




HB2539:
Sex Offender Registration; Petition

- The defendant must avow the following under the penalty of perjury:
 - The defendant was under 22 years old at the time of the offense;
 - The victim was 15, 16 or 17 years of age at the time of the offense;
 - The conduct was consensual;
 - The defendant did not violate any sex offender terms of probation;




**HB2539:
Sex Offender Registration; Petition**

- The defendant has not committed another felony offense, sexual offense or offense involving the sexual exploitation of children;
- The court has not determined that there is probable cause to believe that the defendant is a sexually violent person;
- There is no sexually violent person proceeding pending;




**HB2539:
Sex Offender Registration; Petition**

- There was not more than one victim; and
- The defendant was not sentenced to prison for the offense.
- The court shall hold a hearing on the petition and provide sufficient notice to the state to allow victim notification.
- State has the burden of establishing that one or more of the factors were not met.




**HB2539:
Sex Offender Registration; Petition**

- The court shall deny the petition if any factor is not met.
- The court may deny the petition if the court finds doing so is in the best interest of the state or tends to ensure the safety of the public.




HB2488:
Sexual Assault; Parental Rights

- A person who is convicted of a sexual assault that led to the birth of a child has none of the rights related to legal decision-making or parenting time in regards to the child.




Legislation that is pending.
These bills have not yet passed but are expected to receive a final vote.




SB1294:
Scanning Devices; Burglary; Penalty

- Increases the classification for unlawful possession of a scanning device from a class 6 felony to a class 4 felony (13-2110).
- Amends the definition of "structure" to include any device that accepts electronic or physical currency and is used to conduct commercial transactions. (13-1501)




HB2115:
Misappropriation of Public Monies

- It is a violation of 13-1821 if, without lawful authority and with an intent to defraud, public officer or employee uses or transfers public monies for personal use that is not reasonably related to the person's employment as a public officer or employee for a public agency.
- Classification depends upon the amount of the misappropriation.




HB2375:
Crime Victim's Rights; Facility Dogs

- Requires the court to allow a victim under 18 years of age to have a facility dog, if available, accompany the victim while testifying in court.
- Permits the court to allow a victim who is 18 years of age or older or a witness to use a facility dog.




HB2375:
Crime Victim's Rights; Facility Dogs

- Party seeking the use of a facility dog shall file a notice with the court with certification of the dog and evidence that the dog is insured.
- Court shall instruct the jury on the role of the facility dog and that the dog is a trained animal.




HB2383:
Law Enforcement Records; Privacy

- A person making a public records request for a record that visually depicts a crime victim or a minor must establish that the public interest in the record outweighs the victim's right to privacy.




HB2383:
Law Enforcement Records; Privacy

- The personal identifying information of a witness to crime, which is contained in a law enforcement prosecution record, must be redacted before the record is released pursuant to a public records request.
 - This does not impact the discovery process or communications between law enforcement agencies, prosecutors and the court.




SB1286:
Internet Sex Offender Website

- DPS is responsible for creating and maintaining an internet sex offender website to provide information to the public about sex offenders who are categorized as level two or three offenders.
- The information provided includes the offender's name, age, address, current photograph and a description of the offense, as well as the individual's notification level.




SB1285:
Internet Sex Offender Website

- ARS 13-3827 is amended to require DPS to include level one offenders convicted of sexual assault and certain DCAC offenses on the website.



SB1298:
Probation; Juvenile; Adult

- Expands conditions that a juvenile placed on intensive probation may be subject to by including participation in:
 - A treatment program; or
 - An activity that improves the juvenile's pro-social skill development. This includes an activity that enhances the juvenile's relationship with his or her family.
- Requires adult probation teams to verify the probationer's employment weekly, instead of requiring weekly contact with the employer.



SB1298:
Probation; Juvenile; Adult

- Permits an offender who was convicted of a DCAC offense and who was placed on GPS or EM prior to July 13, 2009 to petition the court to have the requirement removed if the offender was not required to register as a sex offender and is not designated as a Level-3 sex offender.
- The court shall consider the safety of the public and the conduct of the defendant while on probation in making the determination.



SB1449:
Prohibited Operations; Unmanned Aircraft

- It is a class 1 misdemeanor to operate a drone if such operation:
 - Is prohibited by federal law or FAA regulations; or
 - Interferes with first responder operations.
- Using a drone to intentionally photograph or loiter over or near a critical facility (defined) is a class 6 felony.




SB1449:
Prohibited Operations; Unmanned Aircraft

- A city or town is prohibited from enacting an ordinance, rule or policy related to drones, except:
 - Regulating the taking off and landing of drones in a park or preserve when there are other parks available within the jurisdiction or there is only one park within the jurisdiction.




SB1257:
Misconduct; Weapons; Public Places

- Exempts from *misconduct involving weapons* a person who possesses a valid CCW permit and carries a deadly weapon into a public establishment, other than a vehicle or craft, or at a public event.




SB1257:
Misconduct; Weapons; Public Places

- Excludes several establishments/events, including:
 - Secure facilities (defined);
 - Any public establishment/event with a liquor license;
 - Arizona State Hospital;
 - Any judicial department, law enforcement agency or correctional facility;
 - Schools.



SB1039:
Grand Jury; Excuse; Jury Service

- A person is excused from jury service for a period of four years following their last day of service on a grand jury.



SB1211:
Victim Compensation Fund; Allocations

- The Victim Compensation and Assistance Fund (VCAF) is administered by ACJC and are allocated for the purposes of establishing, supporting and maintaining programs that compensate and assist victims of crime.
- Currently not more than 50% of the funds may be allocated to governmental agencies or public officers who are members of ACJC.
- SB1211 removes this cap.



SB1308:
Juvenile Charged as Adult; Detention

- The court may order a juvenile charged as an adult pursuant to 13-501 to be detained in a juvenile detention center (rather than the county jail) unless the juvenile is charged with a dangerous offense.




SB1308:
Juvenile Charged as Adult; Detention

- The court shall consider:
 - The best interests of both the juvenile charged as an adult and the other juveniles detained in the juvenile detention center.
 - The severity of the charges against the juvenile charged as an adult.
 - The existing programs and facilities for juveniles at both the juvenile detention center and the adult facility.
 - Any other factor relevant to the determination of where to detain the juvenile.



HB2261:
EBT; Benefit Transfers; Prohibitions

- Makes it a Class 1 misdemeanor for any of the following businesses to operate on their licensed premises an automatic teller machine or a point-of-sale terminal that processes cash assistance EBT card transactions:
 - A liquor store;
 - A commercial horse racing or dog racing facility;
 - An adult oriented entertainment establishment.



Questions?

- Thank you for attending!

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